

**DEPARTMENT OF STATE REVENUE**

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**LETTER OF FINDINGS NUMBER: 97-0565 ITC**

**Adjusted Gross Income Tax  
Calendar Years 1993-1995**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Adjusted Gross Income Tax – Sales To Foreign Countries**

**Authority:** IC 6-3-2-2(e), 45 IAC 3.1-1-64; 45 IAC 3.1-1-53; P.L. 86-272

The taxpayer protests the throwback to Indiana of export sales to foreign destinations because they were sales to subsidiaries.

**STATEMENT OF FACTS**

Taxpayer is a Delaware corporation domiciled in Illinois with three manufacturing facilities in Indiana. Taxpayer's U.S. divisions sell their products overseas to twelve foreign subsidiaries.

**I. Adjusted Gross Income Tax – Throwback Sales**

**DISCUSSION**

The taxpayer protests the throwback to Indiana of export sales to foreign countries. Evidence that the taxpayer's export sales to foreign countries would be subject to tax in those jurisdictions was unavailable as no tax returns were required to be filed for the years under audit. Taxpayer states the sales were made to subsidiaries and taxes were paid in those countries by the subsidiaries.

IC 6-3-2-2(e), the throwback rule, provides in pertinent part, "Sales of tangible personal property are in this state if...(2) the property is shipped from an office, store warehouse, factory, or other place of storage in this state and (B) the taxpayer is not taxable in the state of the purchaser." The throwback rule reverts the sales receipts to the State from which the goods are shipped in situations where federal constitutional restriction or Public Law 86-272 deprive the purchaser's State of the power to impose a net income tax. See 45 IAC 3.1-1-64. The taxpayer's subsidiaries supposedly paid tax in their foreign countries, but the taxpayer did not. Therefore, the throwbacks are proper.

**FINDING**

The taxpayer's protest is denied.